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**(VIA FACSIMILE, ECF & OVERNIGHT MAIL WITH DOCUMENTS)**

April 15, 2014

Judge William F. Kuntz, II  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Estate of Daniel McDonnell, by Danielle McDonnell, Administratrix, Devon McDonnell, an infant by his mother and natural guardian, Danielle McDonnell, and Danielle McDonnell, Individually v. County of Suffolk, et al.*  
*Docket #: CV11-4221 (WFK)*

Dear Judge Kuntz:

We are the attorneys for Plaintiffs in the above action. We write to request a conference based upon the recent exchange of the Internal Affairs Report and attachments thereto in this Civil Rights/wrongful death action. Due to the impending Jury Selection date of May 19<sup>th</sup> we are faxing this request in addition to filing via ECF. Attachments are being provided via overnight mail due to claims of confidentiality by the defendants: Internal Affairs Report of Inspector Cardarelli dated February 17, 2014, Internal Affairs Report of Det. Love dated March 21, 2013, and Unredacted State Commission of Corrections Report dated June 18, 2013.

As the Court may recall, Plaintiffs have vigorously pursued discovery of Internal Affairs documents throughout this litigation. This matter was ordered ready for trial by Magistrate Brown with the explicit direction they be provided as soon as available and that further discovery may be pursued if warranted by the IA documents. Now on the eve of trial, exchange of the report and its attachments reveal that material facts and witnesses have been withheld by the Defendants.

Had this report been issued in a timely fashion, the Plaintiffs would have moved for Summary Judgment based upon the admissions therein. Despite the delay in issuing the final report, Defendants were repeatedly directed to turn over documents in IA's possession, short of the final report. For over one year, the Defendants have withheld the Report of Sgt. Love of the Internal Affairs Bureau. Moreover, this report indicates that Sgt. Love and his counterpart, Lt. Kenneally

were at the scene within 2 ½ hours of the death, while their presence was never previously disclosed. In fact, the presence of IA was actively denied by the defendants. Likewise, the Plaintiffs were consistently led to believe the IA Bureau had closed its case as unsubstantiated while this report finds several claims that articulate their causes of action are confirmed. Clearly this report should have been exchanged one year ago, let alone within Defendants' more recent exchange purporting to provide all attachments to the final draft report.

Furthermore, the unredacted Report of the New York State Commission of Correction at page 25 contains a referral to the Office of the Attorney General, Division of Criminal Justice to undertake a Criminal Investigation into the excessive use of physical force utilized by police members in this case. That portion of the report was redacted in a copy that we received earlier in discovery by subpoena. This document is an attachment to the belated final report which should have been exchanged but was omitted in Defendants' previous proffer of "attachments".

Based on the foregoing it is respectfully requested that the Court convene a Conference at a date and time at its convenience and that the Court direct the County to produce Captain Cardarelli, Sergeant Love and Lieutenant Kenneally for immediate Deposition.

I have previously conferred with Brian Mitchell, Assistant County Attorney representing the Defendants herein on these matters and have been unable to resolve them.

Thank you for your courtesy and attention to this matter.

Sincerely yours,

Stephen Civardi

SC/er

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